HIGH COURT OF CHHATTISGARH AT BILASPUR

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Writ Petition No. 1445 of 2001

R.S. Dwivedi

-Versus-

M. P. State Co-operative Marketing Federation Ltd. Bhopal & others

ORDER for consideration.

Sd/-
Satish K. Agnihotri
Judge

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

Post for order on 10th August, 2005.

Sd/-
Satish K. Agnihotri
Judge

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Mr. Yashwant Tiwari, Advocate for the petitioner.

Mr. Abhishek Sinha, Advocate for the Respondents No. 1 and 3.

Dr. N. K. Shukla, Senior Advocate with Mr. Shailendra Shukla, Advocate for the Respondent No.2.

ORDER

(10th August.2005)

By Justice Satish K. Agnihotri.

1. The present petition filed under Articles 226 and 227 of the Constitution of India impugns the order dated 28.9.1999 passed by the Madhya Pradesh State Co-operative Tribunal, Bhopal in S.A. No. 148/99 confirming the orders dated 31.8.1996 and 28.12.1998 passed by the Additional Registrar, Co-operative Societies, Madhya Pradesh, Bhopal in Case No. 77-76/96. The present petition further impugns the order dated 13.4.2001 passed by the Madhya Pradesh Co-operative Tribunal, Bhopal in Review Case No. 45/99 whereby the petitioner was denied back wages and other consequential benefits pursuant to reinstatement in service.

2. The undisputed facts in brief are that the petitioner was working as Marketing Officer in the services of the Respondent No.1 at office at Ambikapur, when he was terminated from the service on 22.6.1992, after a departmental enquiry was held on five articles of charges to the effect that out of 40 go-downs, the petitioner had wrongly and

excessively assessed the capacity of 5 go-downs thereby causing financial loss of about 31,000/- to the Respondent No.1.

3. The petitioner, being aggrieved, filed an application under Section 55(2) of the Madhya Pradesh Co-operative Societies, Act, 1960 (hereinafter 'the Act, 1960') before the Deputy Registrar, Co-operative Societies, Bhopal which was registered as Case No. C-67/93 and vide order dated 7.5.1996 the Deputy Registrar, Co-operative Societies quashed the second show cause notice dated 11.3.1991, after enquiry report was submitted, on the ground that the Administrative Committee, which has decided to issue the second show cause notice was not properly constituted and the said show cause notice did not indicate the proposed punishment, and as such, the show cause notice was held to be bad. Consequently, the termination order dated 22.6.1992 was quashed. On the question of validity of the departmental enquiry it was found that the departmental enquiry was properly held. The Deputy Registrar, accordingly, set-aside the termination order dated 22.6.1992 and directed reinstatement of the petitioner with full back wages and allowances.

4. Being aggrieved, the Respondent No.1 filed an appeal before the Registrar, Cooperative Societies, Madhya Pradesh, bearing Case No. 77-76/96. The Additional Registrar, Cooperative Societies, Madhya Pradesh, Bhopal vide his judgment and order dated 31.8.1996 came to the conclusion that the order of termination was set-aside by the Deputy Registrar on technical ground and as such the petitioner was not entitled to consequential benefits of back wages and allowances, particularly in view of the fact that it had been held proved that the petitioner had caused financial loss to the Marketing Federation. On the question of reinstatement the order passed by the Deputy

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Registrar was confirmed by the Additional Registrar, Cooperative Societies.

5. In compliance of the order dated 31.8.1996 passed by the Additional Registrar, Cooperative Societies the petitioner was reinstated in service on 10.9.1996. The petitioner thereafter retired on superannuation w.e.f. 30.11.1996.

6. Being aggrieved by the order of the Additional Registrar, Co-operative Societies, denying the consequential back wages and allowances, the petitioner filed a second appeal before the Board of Revenue, Madhya Pradesh, bearing Appeal No. 114/P.B.R./98. The Chairman of the Board of Revenue, Madhya Pradesh, Camp at Bhopal, passed the order dated 24.9.1998, holding that the first appellate Court had not considered the rulings cited by the petitioner and had not adopted a sympathetic approach before denying the benefit of back wages on the principles of 'no work no pay'. Accordingly, the case was remanded back to the Additional Registrar, Cooperative Societies, Madhya Pradesh, Bhopal for decision afresh, after considering the rulings cited by the petitioner and bearing in mind the circumstances that the petitioner had retired and had been living from hand to mouth.

7. That the Additional Registrar vide his order dated 28.12.1998 reiterated the findings recorded in the earlier order dated 31.8.1996 and held that the order dated 31.8.1996 passed by the Additional Registrar, Co-operative Societies did not require any amendment. The earlier order dated 31.8.1996 was accordingly maintained.

8. Feeling aggrieved, the petitioner again filed second appeal before the Madhya Pradesh Co-operative Tribunal, Bhopal against the order dated 28.12.1998 passed by the Additional Registrar, Co-operative Societies. Learned Co-operative Tribunal vide order dated 28.9.1999 passed in Second Appeal No. 184/99 has confirmed the findings of

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the Additional Registrar and dismissed the appeal accordingly, holding as under:-

> *"In the light of this principle, although there is no evidence of the respondent on the record that during the intervening period of dismissal and re-instatement back of the appellant in services, he was gainfully employed else-where, the appellant is not entitled to back wages. For all these reasons this appeal does not deserve to be allowed. As a result of foregoing discussions, this appeal preferred by the appellant fails and is dismissed accordingly."*

9. The petitioner filed a Review Petition before the M.P. Co-operative Tribunal under Section 77(A) of the Madhya Pradesh Co-operative Societies Act 1960 seeking review of the order dated 28.9.1999. The review petition being Review Case No. 45/99, was dismissed on 13.4.2001.

10. The petitioner preferred this petition under Article 226/227 of the Constitution of India seeking quashing of the order dated 28.9.1999 in S.A. No. 184/99, order dated 13.4.2001 in Review Case No. 45/99 passed by the M.P. State Co-operative Tribunal, orders dated 31.8.1996 and 28.12.1998 passed by the Additional Registrar Co-operative Societies in Case No. 77-76/96. The petitioner further seeks direction of this Court against the Respondents No. 1 and 2 to pay the back wages from 22.6.1992 to 13.9.1996 with other benefits of service with interest at the rate of 12% p.a.

11. Mr. Abhishek Sinha, learned counsel appearing for the Respondents No. 1 and 3 and Dr. N. K. Shukla, learned senior counsel appearing for the Respondent No.2 raised preliminary objections to the maintainability of this writ petition under Articles 226 and 227 of the Constitution of India. Learned counsel for the respondents No. 1 and 3 submitted that the present petition is not maintainable under Article 227 of the Constitution of India i.e. power of superintendence

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and further under Article 226 of the Constitution of India in exercise of the power of the High Court to grant a writ of certiorari. Learned counsel submitted that for entertaining this petition for issuance of a writ of certiorari or to exercise power of supervisory jurisdiction, the requirement is that the error must be manifest and apparent on the face of the proceedings, based on clear ignorance or disregard of the provisions of law, or great injustice or gross failure of injustice has occasioned thereby. It was further contended by learned counsel for the respondents No. 1 and 3 that the High Court in exercise of its extra ordinary jurisdiction to issue a writ of certiorari or in its supervisory jurisdiction under Article 227, should not convert itself into a Court of appeal and indulge in re-appreciation or re-evaluation of the judgment to correct the error. Learned counsel further contended that the High Court while exercising its extra ordinary jurisdiction to issue a writ of certiorari may annul or set-aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in its place thereof. To substantiate his argument, learned counsel cited decisions of the Supreme Court in Hari Vishnu Kamath Vs. Ahmad Ishque & others A.I.R. 1955 S.C. 233, L. Chandra Kumar Vs. Union of India & others A.I.R. 1997 S.C. 1125, M/s. Essen Deinki Vs. Rajiv Kumar, A.I.R. 2003 S.C. 38, and Ranjeet Singh Vs. Ravi Prakash, A.I.R. 2004 S.C. 3892.

12. Dr. N. K. Shukla, learned senior counsel appearing for the Respondent No.2 submitted that this Court has no jurisdiction to entertain this petition under Article 227 of the Constitution of India in supervisory jurisdiction against the impugned order passed by the Madhya Pradesh Co-operative Tribunal, Bhopal, as the Tribunal is located outside the territorial jurisdiction of this High Court. On the question of entertaining this writ petition under Article 226 of the

Constitution of India, learned counsel for the Respondent No.2 has no submission as the cause of action had arisen in Ambikapur within the territorial jurisdiction of this High Court.

13. Shri Yashwant Tiwari, learned counsel appearing for the petitioner submitted that this High Court has jurisdiction to entertain this petition under Article 226 and 227 of the Constitution of India to issue a writ of certiorari in exercise of its extra ordinary powers under Article 226 of the Constitution of India and further to entertain this petition under Article 227 of the Constitution of India in exercise of its powers of superintendence over all Courts by the High Court, as the original order was issued by the Deputy Registrar, Cooperative Societies.

14. Learned counsel for the petitioner further submitted that this is a case where there is error apparent on the face of records as the petitioner was reinstated in service with back wages and other benefits vide order dated 7.5.1996. The appellate authorities have set aside the order of the Deputy Registrar with regard to the payment of back wages and other benefits ignoring the settled position of law that an employee, who has been illegally terminated, will be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. The Tribunal/Authorities below have clearly held that the petitioner was not gainfully employed elsewhere and the order of termination was found illegal and as such the petitioner was entitled to full back wages with other consequential benefits.

15. In the facts of the case, this Court has power and jurisdiction under Article 226 of the Constitution of India, as the cause of action in part, arose within the territorial jurisdiction of this Court. The petitioner was posted as Marketing Officer in the services of the Respondent

No.1 at Ambikapur, District Surguja (C.G.), when his services were illegally terminated on 22.6.1992.

16. After having heard learned counsels for the parties and perusing the records, we are of the view that there is no dispute with regard to the scope of jurisdiction of the High Court in exercise of its extra ordinary powers under Article 226 of the Constitution of India to issue writ of certiorari and to exercise the powers of superintendence over all Courts under Article 227 of the Constitution of India. The scope is very limited. The Supreme Court in the case of Hari Vishnu Kamath (supra), cited by the petitioner has held in para 11 as under:-

> *"The writ for quashing is thus directed against a record, and as a record can be brought up only through human agency, it is issued to the person or authority whose decision is to be reviewed. If it is the record of the decision that has to be removed by 'certiorari', then the fact that the tribunal has become 'functus officio' subsequent to the decision could have no effect on the jurisdiction of the court to remove the record. If it is a question of issuing directions, it is conceivable that there should be in existence a person or authority to whom they could be issued, and when a 'certiorari' other than one to quash the decision is proposed to be issued, the fact that the tribunal has ceased to exist might operate as a bar to its issue. But if the true scope of 'certiorari' to quash is that it merely demolishes the offending order, the presence of the offender before the court, though proper, is not necessary for the exercise of the jurisdiction or to render its determination effective."*

This view has been approved by the Supreme Court subsequently in several decisions, later on.

17. In regard to the exercise of powers under Article 227 of the Constitution of India, the position of the law is well settled that the High Court in exercise of its powers under Article 227 of the Constitution of India would not act as a Court of appeal, by indulging into the re-appreciation or evaluation of the evidence or correcting the

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errors in drawing inference like a Court of appeal. However the High Court has competence to entertain petition under Articles 226 and 227 of the Constitution of India on the grounds that (i) the error is manifest and apparent on the fact of record; (ii) the decision is erroneous, based on clear ignorance or disregard to the provisions of law; and (iii) a grave injustice or gross failure of justice, has been caused thereby.

18. From reading of all the documents/orders passed by the Tribunal/Authorities below, it is clear that the petitioner has been denied back wages and other consequential benefits in a mechanical way applying the principles of 'No work, no pay' without considering other factors as to whether the alleged misconduct against the petitioner was proved or not and the order of reinstatement was passed on the technical ground, or the petitioner was gainfully employed elsewhere, and not, keeping in view the normal rule, that an employee, whose services has been terminated illegally, will be entitled to back wages in the facts and circumstances of the case. There is clear apparent error on the face of records and the orders were passed ignoring settled position of law in regard to grant of back wages. Hence, we are unable to accept the contention of learned counsels for the respondents that this petition filed under Articles 226 and 227 of the Constitution of India is not maintainable.

19. The only question involved in the present petition is as to whether or not the petitioner is entitled to the back wages after termination order dated 22.6.1992 was quashed and order of reinstatement was passed subsequently which was confirmed by the appellate authority i.e. Additional Registrar also. The Respondents No. 1 and 2 have not challenged the order of reinstatement passed by the Deputy Registrar, Co-operative Societies dated 7.5.1996 and confirmed by the

Additional Registrar, Co-operative Societies in appeal dated 31.8.1996, before the Board of Revenue and Madhya Pradesh Co-Operative Tribunal.

20. Learned counsel for the petitioner submitted that normal rule is reinstatement with full back wages and consequential benefits. Learned counsel further submitted that the Deputy Registrar, Co-operative Societies has held the termination order was illegal and has granted re-instatement with full back wages. There is no reason as to why the petitioner be denied full back wages and other consequential benefits on the principles of 'No work, no pay' when the petitioner was restrained by the illegal order of termination from working.

21. Learned counsel for the petitioner, in support of his contentions, relied on the decisions in the cases of M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. & others A.I.R. 1979 S.C. 75, A.L.Kalra Vs. The Project and Equipment Corporation of India Ltd. A.I.R. 1984 S.C. 1361, Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti & others, (1988) 4 S.C.C. 734, Managing Director, ECIL, Hyderabad etc. Vs. B. Karunakar, etc. A.I.R. 1994 S.C. 1074, and Union of India Vs. Madhusudan Prasad, 2003 AIR SCW 6579.

22. Shri Abhishek Sinha, learned counsel for the Respondents No. 1 and 3 submitted that the termination order was set-aside on the technical grounds that the Administrative Committee which decided to issue second show cause notice after enquiry report was submitted, was not properly constituted and the said second show cause notice did not indicate the proposed punishment and as such the second show cause notice dated-11.3.1991 was quashed. Consequently the termination order dated 22.6.1992 was also quashed. Learned

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counsel further argued that the Deputy Registrar has categorically held that the enquiry was proper and charges were found proved.

23. Learned counsel for the respondents No. 1 and 3 further submitted that the petitioner was not entitled to back wages in view of the fact that the termination order was quashed on technical grounds. Learned counsel relied on the decision in the case of Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd & another, (1984) 3 S.C.C. 5, Punjab Civil Supplies Corporation Vs. Tilak Raj Sharma, (1989) Supp 2 SCC 641, Managing Director, ECIl Hyderabad & others Vs. B. Karunakar & others, (1993) 4 SCC 727, Neeta Kaplish Vs. Presiding Officer Labour Court & others, (1999) 1 SCC 517, PGI of Medical Education and Research Vs. Rajkumar, 2001 (2) SCC 54, Zila Sahakari Kendriya Bank Maryadit Vs. Jagdish Chandra & Ors., 2001(3) SCC 332, Hindustan Motors Ltd. Vs. Tapan Kumar Bhatarcharya, 2002 (6) SCC 41, Madhya Pradesh State Electricity Board Vs. Jarina Bi, 2003 (6) SCC 54, Hissar Central Co-operative Bank Ltd. Vs. Kaliram, 2003 (9) SCC 221, Indian Railway Construction Co. Vs. Ajay Kumar, 2003 (4) SCC 579, Executive Engineer, ZP Engg. Dim. & Am. Vs. Digambara Rao and others, 2004 (8) SCC 262, and General Manager Haryana Roadways Vs. Rudhan Singh, J.T. 2005(6) SC 137.

24. In the course of hearing learned counsel for the Respondents No. 1 and 3 filed a letter dated 28.6.1996 along with affidavit of the Respondents stating that the petitioner had filed an undertaking on 28.6.1996 to the effect that the petitioner would not claim back wages, if he was reinstated. It was pointed out by learned counsel for the petitioner by filing other letter dated 16th July, 1996 that the undertaking dated 28.6.1996 was withdrawn in view of the fact that the petitioner was not reinstated on the basis of the alleged

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undertaking dated 28.6.1996. It was submitted by learned counsel for the petitioner that the petitioner was reinstated in the service by the Respondents No. 1 and 2 not on the basis of any undertaking, but on the basis of the order dated 31.8.1996 of the Additional Registrar passed in the appeal filed by the Respondent No.1.

25. Learned counsel for the petitioner further submitted that the alleged undertaking dated 28.6.1996 was not filed in the Tribunal below and as such the same should not be considered.

26. Admittedly the alleged undertaking dated 28.6.1996 was not given effect to by the Respondents No. 1 and 2 and the reinstatement order was passed only after the Additional Registrar upheld the order of the reinstatement passed by the Deputy Registrar on 7.5.1996.

27. In the case of Managing Director, ECIl, Hyderabad (Supra) the Supreme Court in para 31 has held as under:-

> *"The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."*

28. The facts of the case of Neeta Kaplish (Supra) are not applicable to the facts of the present case as that was a case, where the domestic enquiry was not properly and fairly conducted and it was held that

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effective opportunity of hearing was not given to the appellant, the Supreme Court after having regard to the entire circumstances of the case particularly in view of the finding of the Labour Court that the domestic enquiry was not properly and fairly held, remanded the case to the Labour Court after requiring the parties to lead fresh evidence on merits.

29. In Jitendra Singh Rathor's case (supra) the Supreme Court in para 3 has held as under:-

> *"Wide discretion is vested in the Tribunal under this provision and in a given case on the facts established the Tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages. In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty."*

30. In the case of Jarina Bee (Supra) the Supreme Court in para-9 has held that *"Applying the legal principles, the inevitable conclusion is that the High Court committed an error in holding that the award of full back wages was the natural consequence."*

31. In the case of P.G.I. of Medical Education (Supra) the Supreme Court in para- 14 has held as under:-

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"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. The decision in the matter of back wages, in the instant case, was taken by the Labour Court having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists and obligation on the part of the High Court to record in the judgment, the reasoning before denouncing a judgment of an inferior tribunal, in the absence of which, the judgment cannot stand the scrutiny of otherwise being reasonable."

32. In the case of Indian Railway Construction Co. Ltd. (Supra) the Supreme Court has approved the legal position held in para-12 in the case of P.G.I. of Medical Education & Research's case(Supra) that "payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety". This has been approved in subsequent decisions also.

33. After having heard learned counsel for the petitioner and learned counsels for the respondents and having perused records, we are of the view that the termination order dated 22.6.1992 was quashed consequent upon on quashing of the second show cause notice dated 11.3.1991 on the ground that the administrative committee, which decided to issue the second show cause notice after enquiry report was submitted, was not properly constituted and the said second show cause notice did not specifically mention about the proposed punishment. However, the findings of the Enquiry Officer were not found bad. The Additional Registrar, in appeal has not discussed any other factor of the case except that the termination order was quashed

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on the ground of technicality, while holding that the petitioner was not entitled to full back wages and other consequential benefits on the principles of 'no work, no pay'. It was found that the petitioner was not gainfully employed elsewhere. The Cooperative Tribunal has affirmed the findings of the Additional Registrar without looking into the facts and circumstances of the case. It is well settled principle of law that an employee/workman is not entitled to the full back wages as a natural consequence of illegal termination and reinstatement. The award of back wages depends on the facts and circumstances of the case. In the facts and circumstances of the present case, the termination order of the services of the petitioner was held to be illegal and Deputy Registrar has directed reinstatement with full back wages and other benefits. The appellate Tribunals have not considered these facts while denying the back wages to the petitioner.

34. In view of the above stated facts and circumstances of the case we hold that the petitioner is entitled to 50% back wages and allowance from the date of termination i.e. 22.6.1992 till his reinstatement in his service i.e. 10.9.1996 as it appears that the petitioner was not in gainful employment during this time. The petition is accordingly allowed to the above extent.

35. The Respondents No. 1 and 2 are directed to make payment of 50% back wages and other allowances within a period of two months from the date of receipt of this order. There shall be no order as to costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Thakur